appoint a receiver to take over the assets of the first defendant. This in itself cannot provide a line of defence to the third defendant as the plaintiff's conduct is protected by cl 8 of the guarantee. Moreover, under s 90 of the Contracts Act 1950, mere forbearance on the part of the plaintiff to enforce the debentures does not discharge the liability of the third defendant under the guarantee.

Another point that was taken up by the plaintiff was the delay of about nine months in filing the present application. No reason was given by the third defendant as to this inordinate delay and since he only decided to file the application when his premises were attached, failure on his part to explain the delay raises much doubts as to the bona fides of this application.

As there were no merits shown in the proposed statement of defence, I had accordingly dismissed the third defendant's application, to have the judgment in default against him set aside, with costs.

Order accordingly.

Solicitors: *Nahappan & Peri*; *Adam & Co.*

Reported by *Ng Sheau Jiuan*

Verghese Mathai v Telok Plantations Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) – COMPANIES WINDING UP NO D2-42-106-88
SITI NORMA YAAKOB J
13 JULY 1988

Companies and Corporations – Misjoinder of parties to petition – Striking off fourth respondent as party in petition – Application for – Objections raised by fourth respondent as to its inclusion as party – Petitioner a majority shareholder of first and fifth respondents and not a member of fourth respondent – Scheme of arrangement to reduce fourth respondent's financial burden accepted by first and fifth respondents – Petitioner's claim that such scheme is oppressive to him – Whether petitioner has locus standi to challenge scheme of fourth respondent – Companies Act 1965, s 181

This is an application by the fourth respondent to have itself struck out as a party to an action presented by the petitioner under ss 181 and 218(1)(f) and (i) of the Companies Act 1965 ('the Act'). The petitioner claimed that a scheme of arrangement formulated by the second and third respondents to enable the fourth respondent (in receivership) to reduce its financial burden and strengthen its financial position was oppressive to him and sought the court's aid to prohibit the fourth respondent from proceeding with the scheme. The petitioner is not a member or shareholder of the fourth respondent. However, he claims connection with the fourth respondent by virtue of the fact that he is a shareholder of the first and fifth respondents who in turn are the secured creditor and shareholder respectively of the fourth respondent. The fourth respondent now contends that the petitioner has no locus standi under s 181 and s 218(1)(f) and (i) of the Act.

Held, allowing the application: (1) The petitioner is questioning the propriety of the scheme as a minority shareholder of the first and fifth respondents when in fact the very same scheme has already been accepted and adopted by the first and fifth respondents and sanction is presently being sought under s 176 of the Act to have such a scheme approved. If indeed the petitioner will suffer loss by reason of the first and fifth respondents adopting the scheme to his detriment, then he should turn to the first and fifth respondents for such loss but as against the fourth respondent, he has no cause of action whatsoever nor can he claim that he had been oppressed under s 181 of the Act by a scheme of arrangement proposed by the fourth respondent when he is not even a member or a shareholder of the fourth respondent.

(2) As the petitioner has no locus standi under s 181 of the Act to challenge the scheme of the fourth respondent, there had been a misjoinder of parties when the fourth respondent was made a party to this petition.

(3) As the petitioner is not seeking to have the fourth respondent wound up but merely seeking relief on the loss he will suffer, reference to s 218(1)(f) and (i) is irrelevant.

Legislation referred to
Companies Act 1965 ss 16(6), 176, 181, 218(1)(f), (i)

G Sri Ram (*Grace Lim* (*Miss*) with him) for the fourth respondent/applicant.
AJ Dason for the petitioner/respondent.

Cur Adv Vult

Siti Norma Yaakob J: The only issue that was raised by the fourth respondent in its application to have itself struck out as a party to this action is that the petitioner has no locus standi to present a petition under ss 181 and 218 (1)(f) and (i) of the Companies Act 1965 ('the Act').

Section 181 deals with the relief available to any member or holder of a debenture of a company, who claims that he has been oppressed either by any act done or any power exercised in a manner prejudicial to his interests in the company or that some act had been done which unfairly discriminates him as a member of the company.

In this case the petitioner claims that a creditors' compromise on a scheme of arrangement formulated by the second and third respondents to enable the fourth respondent now in receivership to reduce its financial burden and strengthen its financial position, is oppressive to him and he seeks the court's aid to prohibit the fourth respondent from proceeding with the scheme.

Relief under s 181 is only available to a member of a company who maintains that he has been oppressed by anything done or power exercised in the company and the first thing that the petitioner has to satisfy is that he is a member of the fourth respondent.

Members of a company have been defined by s 16(6) of the Act to include (1) the subscribers to the memorandum who have been deemed to have agreed to become members of the company and upon the incorporation of

the company shall be entered as members in its register of members; and (2) every other person who agrees to become a member and whose name is entered in the register of members.

It is not disputed that the petitioner is not a member or shareholder of the fourth respondent. However, he claims connection with the fourth respondent by virtue of the fact that he is a shareholder of the first and fifth respondents who in turn are the secured creditor and shareholder respectively of the fourth respondent. It is the petitioner's contention that the scheme will not benefit either the first or fifth respondents and if it goes through, he, the petitioner will suffer loss by virtue of him being a shareholder of the first and fifth respondents.

By his conduct in presenting this petition, the petitioner is questioning the propriety of the scheme as a minority shareholder of the first and fifth respondents when in fact the very same scheme has already been accepted and adopted by the first and fifth respondents and sanction is presently being sought under s 176 of the Act to have such a scheme approved. If indeed the petitioner will suffer loss by reason of the first and fifth respondents adopting the scheme to his detriment, then he should turn to the first and fifth respondents for such loss but as against the fourth respondent he has no cause of action whatsoever nor can he claim that he had been oppressed under s 181 of the Act by a scheme of arrangement proposed by the fourth respondent when he is not even a member or a shareholder of the fourth respondent. As the petitioner's locus standi is regulated by statute, he must comply strictly with the mandatory provisions of s 181 and to that end there had been a misjoinder of parties when the fourth respondent was made a party to this petition.

The petitioner has admitted that he is not seeking to have the fourth respondent wound up but merely seeks relief on the loss he will suffer. To that end, reference to s 218(1)(f) and (i) is irrelevant as they relate to the circumstances when the court may wind up a company.

As the petitioner has no locus standi under s 181 to challenge the scheme of the fourth respondent, I had accordingly allowed the fourth respondent's application to have itself struck out as a party to this action and that the petitioner bear the costs of its application.

Order accordingly.

Solicitors: *Sri Ram, Zulkifly & Kumar*; *Dason & Co.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Lau Tuck Weng & Anor

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL TRIAL NO 34 OF 1985
KC VOHRAH J
11 JULY 1988

Criminal Procedure – Self-disqualification by judge to hear case – Adverse findings against defence witness made by same judge in previous case – Same defence witness to be called in present case – Whether suspicion of bias might exist – Public policy of justice being seen to be done

The accused were charged with an offence under s 39B of the Dangerous Drugs Act 1952. They wanted to call a witness, C, to testify on their behalf. However, C had been charged previously by the same judge for a similar drug trafficking offence but had been acquitted at the close of the prosecution's case. Even though acquitted, adverse findings were made by that court against C. In the present case, it will be part of the defence that C had access to the premises where the drugs were presumably found and which the accused were charged with trafficking and it is likely that blame will be attributed to C. The deputy public prosecutor raised a preliminary point that this court should disqualify itself from hearing the case as it might be suspected of being biased against C.

Held: (1) In a trial under s 39B of the Dangerous Drugs Act 1952, the judge is both judge of law and judge of fact. The court would be placed in an invidious position that if the court were to acquit both the accused at the end of this case that a lingering doubt should arise or exist in the minds of the prosecution and the public that the court had acquitted them because it had previously dealt with a case where it had made certain adverse findings against C in another case and that its adverse findings had influenced its decision in this case.

(2) Public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in a position that he might be suspected of being biased.

(3) The court therefore disqualifies itself from hearing the case.

Cases referred to

1 *Allinson* v *General Council of Medical Education and Registration* [1894] 1 QB 750 (folld)
2 *Vellu Thevar* v *R* AIR 1932 Rang 90 (folld)
3 *R* v *Sussex Justices, ex p McCarthy* [1924] 1 KB 256 (refd)

Legislation referred to

Dangerous Drugs Act 1952 s 39B

Foo Lee Mei (Miss) (Deputy Public Prosecutor) for the Public Prosecutor.

K Radhakrishnan (R Ramanathan (Miss) with him) for the accused.

Cur Adv Vult

KC Vohrah J (deciding a preliminary point raised by the DPP): I commend the deputy public prosecutor (DPP) for bringing to my attention that in this case, a case under s 39B of the Dangerous Drugs Act 1952, it is likely that both the accused would call a witness, Chan Ah Kow, to